

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGEL CHEVRESTT,

Plaintiff,

- against -

HEARST COMMUNICATIONS, INC.

Defendant.

1:16-cv-05520 (RA)

**DECLARATION OF
ANGEL CHEVRESTT**

ANGEL CHEVRESTT, under the penalty of perjury, declares:

1. I am the plaintiff in this action.
2. I am over the age of 18 years old and competent to submit this declaration in support of my motion for partial summary judgment against the defendant, Hearst Communications, Inc. (“Defendant” or “Hearst”) on liability for copyright infringement.

Background

3. I am a professional photographer and photojournalist. I have worked on a freelance basis for the New York Post for over twelve years and, at times relevant hereto, my work with the New York Post was my primary source of income.

4. In the past, I also worked for the New York Daily News and have taught photography.

My Photographs of Babe Ruth’s Former Apartment – August 30, 2015

5. On or about August 30, 2015, I photographed Babe Ruth’s former apartment on the Upper West Side which, at the time I created the photographs, was on sale for approximately \$1.6 million (the “Photographs”). Attached as Exhibit A are true and correct copies of the Photographs.

6. At the time I created the Photographs, I was working on freelance assignment for the New York Post. Accordingly, my purpose for taking the Photographs was for commercial news reporting and for licensing to news outlets.

7. My intent in taking the Photographs was to show the public how Babe Ruth's former apartment looked at the time it has been placed on the market for sale.

8. When I arrived at Babe Ruth's former apartment on August 30, 2019, I had to personally negotiate access to the premises for the purpose of taking photographs.

9. In creating the Photographs, I exercised a personal and creative choice in the selection of camera equipment, wide angle lens, perspective, angle, lighting and exposure.

10. With respect to lighting, I chose to use natural sunlight rather than an artificial flash. As such, the timing of the Photographs, which was also under my control, played a crucial role in the final look of the images because natural light changes by the moment.

My Licensing of the Photographs to the New York Post

11. Shortly after I created the Photographs, I personally selected the optimal images and then licensed them to the New York Post for purposes of publication.

12. On or about August 31, 2015, at 1:10 a.m. EST, the New York Post published the Photographs as part of a news article entitled "*You Can Own Babe Ruth's two-bedroom UWS apartment for \$1.6M*". Attached as Exhibit B is a true and correct copy of the New York Post article (accessed June 23, 2016) (the "NY Post Article").

Defendant's Unauthorized Publication of the Photographs – August 31, 2015

13. On or about August 31, 2015, Defendant posted the Photographs to the www.elledecor.com website (the "Website") as part of a news article entitled "*Live Like a Sports Legend in Babe Ruth's Former Manhattan Apartment: Don't strike out on the chance to live like*

baseball's greatest hero" (the "Elle Décor Article"). True and correct copies of the Elle Décor Article, in two iterations, are attached hereto as Exhibit C.

14. The text of the Elle Décor Article which accompanies the Photographs reads in its entirety:

Attention sports fans who missed out on buying LeBron James' \$13.4 million mansion, you've got another shot at owning a piece of a great athlete's legacy. This time, for a much smaller price tag.

The Manhattan apartment where the Great Bambino himself, Babe Ruth, lived while playing for the New York Yankees is now on the market, asking a modest — by today's professional athletes' standards, that is — \$1.595 million, according to The New York Post.

The two-bedroom, three-bathroom home is actually just a portion of the apartment the "Sultan of Swat" lived in, as Ruth and his wife owned the entire seventh floor. But sometime after they moved out in 1940, the 11-room apartment was divided into two separate units, according to 6sqft.com. Ruth's daughter Julia Ruth Stevens told The Post that her parents "loved to entertain" in their apartment, and even hosted traveling players and former Yankees returning to New York, so baseball buffs are sure to be attracted to the historic space, even though the kitchen is in need of some modern updates.

The Upper West Side building even comes with a plaque on its exterior that recognizes it as the former home of one of baseball's greatest players.

Take a closer look at the home in the photos below.

15. Defendant used the Photographs for the same purpose for which they were created: to show what Babe Ruth's apartment looked like in the context of a commercial news report about the sale of the famous athlete's former apartment.

16. Defendant did not seek my permission to publish the Photographs and I never granted Defendant authorization to copy the Photographs or distribute copies of my work to the public.

17. Prior to Defendant's publication of the Photographs, there was no communication between myself and Defendant.

Registration of the Photographs – November 26, 2015

18. My counsel, Liebowitz Law Firm, PLLC (the “Firm”), enforces my rights against copyright infringers. As part of the services it provides, the Firm registers my photographs with the U.S. Copyright Office (“USCO”).

19. I authorized the Firm to register the Photograph with the USCO on my behalf.

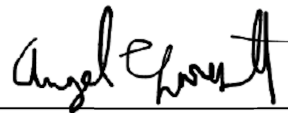
20. I am in possession of a registration certificate for the Photographs, bearing number VA 1-997-006, with effective date November 26, 2015 (the “006 Registration”).

Attached as Exhibit D is a true and correct copy of the 006 Registration.

21. I obtained the 006 Registration on November 26, 2015, within three months after first publication of the Photographs on August 31, 2015.

Dated: New York, New York

Executed this 16th day of August, 2019



ANGEL CHEVRESTT